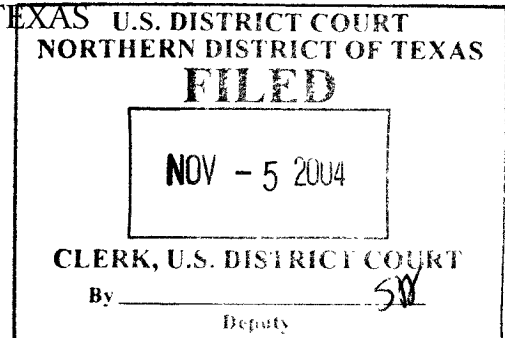


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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



MELVIN RAY HASSELL,

Plaintiff,

VS.

UNITED STATES OF AMERICA and
EARL HUDLEY, JR., an Individual,

Defendants.

CIVIL ACTION NO.

3:04-CV-0974-G

MEMORANDUM ORDER

Before the court is the motion of the defendant, the United States of America (the "United States" or "defendant"), to dismiss the complaint of the plaintiff, Melvin R. Hassell ("Hassell"), or in the alternative, for summary judgment on Hassell's claims ("Motion to Dismiss"). For the reasons stated below, the United States' motion to dismiss is granted.

I. BACKGROUND

This case involves a complaint by Hassell against the United States and Earl Hudley, Jr. ("Hudley"), an Internal Revenue Service ("I.R.S.") agent, for violations of the Internal Revenue Code and the regulations promulgated thereunder.

On May 6, 2004, Hassell filed his verified petition, claim and complaint under authority of 26 U.S.C. § 7433 (“Complaint”). In his complaint, Hassell alleges that Hudley violated the Internal Revenue Code on approximately 23 occasions. Hassell contends that these alleged violations give rise to a claim for civil damages against Hudley and the United States under the authority of section 7433.

On July 8, 2004, the United States filed the instant motion to dismiss. In response, on July 15, 2004, Hassell filed a motion to strike the motion to dismiss (“First Motion to Strike”). Hassell’s first motion to strike was ordered unfiled by this court due to Hassell’s failure to sign the pleading. *See* Order Striking/Unfiling [First Motion to Strike] (entered July 20, 2004). Hassell then filed his second motion to strike the motion to dismiss on July 23, 2004 (“Second Motion to Strike”). However, this motion was stricken from the record on August 19, 2004, due to “redundant, immaterial, impertinent and even scandalous” allegations. *See* Order (entered August 20, 2004). On August 18, 2004, the United States filed a reply to the second motion to strike.

II. ANALYSIS

A. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction. *See Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 377 (1994); *Owen Equipment and Erection Company v. Kroger*, 437 U.S. 365, 374 (1978). A federal court may exercise

jurisdiction over cases only as expressly provided by the Constitution and laws of the United States. *See* U.S. CONST. art. III §§ 1-2; *see also Kokkonen*, 511 U.S. at 377. Federal law gives the federal district courts original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Moreover, a party seeking relief in a federal district court bears the burden of establishing the subject matter jurisdiction of that court. *United States v. Hays*, 515 U.S. 737, 743 (1995); *McNutt v. General Motors Acceptance Corporation of Indiana, Inc.*, 298 U.S. 178, 189 (1936); *Langley v. Jackson State University*, 14 F.3d 1070, 1073 (5th Cir.), *cert. denied*, 513 U.S. 811 (1994).

Rule 12(b)(1) of the Federal Rules of Civil Procedure authorizes the dismissal of a case for lack of jurisdiction over the subject matter. *See* FED. R. CIV. P. 12(b)(1). A motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction must be considered by the court before any other challenge because “the court must find jurisdiction before determining the validity of a claim.” *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994) (internal citation omitted); *see also Ruhrgas AG v. Marathon Oil Company*, 526 U.S. 574, 577 (1999) (“The requirement that jurisdiction be established as a threshold matter . . . is inflexible and without exception”) (citation and internal quotation marks omitted). On a Rule 12(b)(1) motion, which “concerns the court’s ‘very power to hear the case . . . [,] the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to

hear the case.’” *MDPhysicians & Associates, Inc. v. State Board of Insurance*, 957 F.2d 178, 181 (5th Cir.) (quoting *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir.), *cert. denied*, 454 U.S. 897 (1981)), *cert. denied*, 506 U.S. 861 (1992). In ruling on a motion to dismiss under Rule 12(b)(1), the court may rely on: “1) the complaint alone; 2) the complaint supplemented by undisputed facts; or 3) the complaint supplemented by undisputed facts and the court’s resolution of disputed facts.” *MCG, Inc. v. Great Western Energy Corporation*, 896 F.2d 170, 176 (5th Cir. 1990) (citing *Williamson*, 645 F.2d at 413).

B. Exhaustion of Administrative Remedies

The United States asserts that Hassell’s claims against it under 26 U.S.C. § 7433 should be dismissed because Hassell has failed to exhaust administrative remedies. Motion to Dismiss at 3-5. Exhaustion of administrative remedies under section 7433 is a jurisdictional prerequisite. *Porter v. Fox*, 99 F.3d 271, 274 (8th Cir. 1996). Section 7433(d)(1) provides that “[a] judgment for damages shall not be awarded under [§7433(b)] unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.” 26 U.S.C. § 7433(d)(1). The administrative remedies afforded to plaintiffs asserting claims under section 7433 are provided by Treasury Regulation § 301.7433-1. 26 C.F.R. § 301.7433-1. Under these regulations, administrative

claims must be filed with the Area Director of the I.R.S. prior to filing a civil action in federal district court. 26 C.F.R. § 301.7433-1(d),(e)(1).

Hassell has failed to provide the court with any evidence that he has exhausted his administrative remedies under section 7433. The only document provided by Hassell that could possibly be considered an attempt to administratively challenge the actions of the I.R.S. agents is a letter, dated June 12, 2003, from Hassell's former attorney addressed to John Ashcroft, the United States Attorney General. See Letter dated June 12, 2003 to John Ashcroft, attached to Hassell's Emergency Motion for a Preliminary Injunction. This letter, however, asserts no claims under section 7433, nor does it comply with the manner dictated by the regulations for filing an administrative claim with the I.R.S. See *id.*; C.F.R. § 301.7433-1(e).

Hassell has thus failed to establish that he has exhausted his administrative claims with the I.R.S. Accordingly, this court lacks subject matter jurisdiction over his claim under section 7433.

Additionally, the United States raises the issue of whether Hudley is a proper party to a claim under section 7433. The statute provides that a "taxpayer may bring a civil action for damages against the United States. . . . [S]uch civil action shall be the exclusive remedy for recovering damages resulting from [actions in violation of Title 26 or the Regulations promulgated thereunder]." 26 U.S.C. § 7433(a). Under this statute, therefore, only the United States is a proper defendant on a section 7433


claim, and the court lacks jurisdiction to adjudicate Hassell's claims against Hudley.
See *Hassell v. United States*, 203 F.R.D. 241, 244 (N.D. Tex. 1999).

III. CONCLUSION

For the reasons stated above, the United States' motion to dismiss is
GRANTED. Additionally, the court finds *sua sponte* that it lacks jurisdiction over
Hassell's claims against Earl Hudley, Jr. Accordingly, Hassell's claims against both
defendants are **DISMISSED** for lack of jurisdiction.

SO ORDERED.

November 5, 2004.



A. JOE FISH
CHIEF JUDGE